

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

C.R.No.1840 of 2006 (O&M)

Date of Decision : 13.08.2007

Manohar Lal Sanghi

.....Petitioner

versus

Jaswant Rai Ahuja

.....Respondent

CORAM : HON'BLE MR.JUSTICE HEMANT GUPTA

Present: Mr.O.P.Goyal, Senior Advocate with
Ms.Priya Khurana, Advocate for the petitioner.

Mr.Arun Jain, Advocate for the respondent.

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JUDGMENT

HEMANT GUPTA, J.

C.M.No.5520-CII of 2007.

Notice.

Mr.Arun Jain, Advocate accepts notice on behalf of the respondent and states that the respondent-landlord has no objection if the documents attached with the application are permitted to be taken on record.

In view thereof, the present application is allowed. The documents attached with the application are permitted to be taken on record.

C.R.No.1840 of 2006.

The tenant is in revision aggrieved against the order of eviction passed by the learned Appellate Authority on the ground that the demised premises is required for bonafide personal use and occupation of the landlord.

The respondent-landlord inducted the present petitioner as tenant in the shop located at Pull Bazar, Narnaul on 17.12.1977 at the monthly rent of Rs.325/-. The rate of rent was enhanced to Rs.407/- per month w.e.f. 6.1.1992. The ejectment was sought by the landlord, inter-alia, on the ground that the premises is required for bonafide use and occupation of the landlord as he wants to run his business in the demised premises after his retirement. The tenant controverted the averments made by the landlord and asserted that the landlord was having other non-residential property in the urban area at Narnaul, which was rented out to one Shambhu Dayal Kokcha and, therefore, the ground of personal necessity is not available to the landlord.

The learned Rent Controller dismissed the petition finding that it is mere wish of the landlord as three sons of the landlord are residing in Gurgaon, one in Asansole, one in Australia and one in Maskat. The passport of the landlord, Exhibit R-1, clearly indicates that the landlord is frequent visitor of Australia, Sri Lanka and other several countries. A person who has indulged in business with his sons in foreign countries and have frequent trips of the foreign countries, is not supposed to start his business at Narnaul.

In appeal, it has been found by learned Appellate Authority that at the time of letting of the premises on rent vide Rent Note Exhibit P-12, the appellant-respondent was serving in Municipal Council, Rewari. He superannuated on 31.1.1997. The landlord appeared as PW-3 and deposed that he was in need of the shop to run a business for his own livelihood after retirement. The ejectment petition was filed in July, 1997. The Appellate Authority found that the premises in dispute is commercial in nature. It has

been found that the landlord with his family, is keeping his residence in the building, other than the shop in dispute. Apart from the two buildings i.e. one under litigation and another being used for residence of the landlord, the landlord has no other building. Thus, the learned Appellate Authority found that merely because a son of the landlord had been carrying out the business of sale and purchase of shares from his residence when he was staying with the landlord for some time, would not change the building from residential to non residential. Still further, it has been found that if six sons of the landlord are engaged in different business activities at different places and the landlord keeps on visiting them, it cannot be indicative of the fact of running of business by the landlord with his sons. It was found that the landlord has no commercial property from where he can make both ends meet by running a business after his retirement. Thus, the learned Appellate Authority found that the requirement pleaded is proved to be bonafide and consequently, an order of ejectment was passed.

Before this Court, the learned counsel for the petitioner has vehemently argued that, in fact, one Shambhu Dayal, Tailor was the tenant in the first floor of the non-residential property. The landlord has filed a suit for possession against said Shambhu Dayal within the exemption period for the applicability of the Rent Restriction statutes. The said suit was decreed. The decree was maintained by this Court when the second appeal filed by Shambhu Dayal was dismissed vide judgment and decree dated 17.7.2003. Thus, it is contended that the alternative non-residential accommodation is available to the landlord and, therefore, the tenant cannot be evicted.

In support of such arguments, the learned counsel for the

petitioner has produced the pleadings of the previous proceedings initiated against Shambhu Dayal and the judgment and decree passed thereon. It is vehemently contended by learned counsel for the petitioner that in the judgment and decree, the premises in possession of Shambhu Dayal is described as shop and, therefore, another shop is available to the landlord from which he can carry out his commercial activities.

On the other hand, learned counsel for the respondent has pointed out that, in fact, the premises let out to Shambhu Dayal was part of residential building. Since Shambhu Dayal was carrying on business as Tailor, therefore, at some places, the premises has been mentioned as shop. This is an inadvertent omission. Such description of the property is only to identify the premises in dispute let out to Shambhu Dayal and is not indicative of the tenanted premises. It is argued that if the entire eviction proceedings between landlord and Shambhu Dayal as well as in the present case are examined, it is apparent that the premises in possession of Shambhu Dayal is nothing, but a part of the residential premises.

A perusal of the plaint of the suit for ejectment filed by the landlord against Shambhu Dayal, shows that in the cause title, the landlord has sought ejectment of the defendant in respect of “shop” facing west, situated at first floor consisting of two rooms and a toilet with Chhajja (projection). In the first paragraph of the plaint, the landlord has described that the plaintiff had constructed a house on the 1st floor facing west consisting of two rooms, one toilet and projection/Chhajja towards west. In para 5 (a) of the plaint, the landlord has again pleaded that the disputed property was residential building and it was let out to defendant No.1 (Shambhu Dayal) for the said purpose, but the same has been sublet by

defendant No.1, Shambhu Dayal, to his son. In para 12 of the plaint, the landlord has pleaded that a decree for possession by way of ejectment against defendants in respect of a house facing west situate at 1st floor consisting of two rooms and a toilet with Chhajja (projection), to be granted. It is, thus, apparent that apart from the word “shop” used in the cause title, the landlord has not described the premises let out to Shambhu Dayal as non-residential building at any place in the plaint. It may be noticed that Shambhu Dayal has denied that the premises let out is the residential building. The said suit was dismissed by the learned trial Court, but was decreed by the learned Additional District Judge, Narnaul on 15.2.2002 when the defendants i.e. Shambhu Dayal etc. were directed to hand over the vacant possession of the “shop” to the plaintiff within 2 months. The said judgment and decree was affirmed in second appeal by this Court while deciding R.S.A. No.1330 of 2002 on 17.7.2003.

The present petitioner has pleaded that the premises in dispute is non-residential building. In replication, the landlord has pleaded that for the purpose of running the business, the first floor is not suitable nor the said portion was constructed for the said purpose. It was pleaded that the said portion was constructed for the purpose of residence and, therefore, it is incorrect that the said portion is non-residential building.

At the outset, an argument raised by learned counsel for the petitioner may be noticed. He has relied upon the site plan, Exhibit PW-2/A produced in the suit filed by the landlord against Shambhu Dayal. The said site plan is not part of the documents produced on record before this Court as well, therefore, the said site plan cannot be taken into consideration.

The entire stress of the learned counsel for the petitioner was

that the first floor has become available to the landlord on account of the eviction order being passed against Shambhu Dayal, therefore, the suitable non-residential premises is in occupation of the landlord where he can carry on his business. However, I do not find any merit in the said argument. The mere fact that the word “shop” is used in the cause title of the suit filed by the landlord against Shambhu Dayal or in the order passed by the learned First Appellate Court and/or by this Court, will not make the premises earlier let out to Shambhu Dayal, as non residential building. It is categorical case of the landlord in the previous eviction proceedings, produced on record by the petitioner himself, that the construction on the first floor was of a residential building. The landlord is clear and categorical that it was the house which was constructed. It has been explained that since the tenant was using the premises constructed for residential purpose, for his tailoring business, therefore, the word “shop” has been used, but such loose uses of the word “shop” will not change the nature of the building. I find substance in the argument raised by learned counsel for the respondent-landlord. It is well settled interpretation of the pleadings that one word can not be used out of the context to raise any inference. If the entire plaint is read, it is apparent that the landlord is describing the premises in dispute as “house”, the construction of which was raised for the purpose of residence. Therefore, I do not find any merit in the arguments raised by learned counsel for the petitioner that the premises let out to Shambhu Dayal was non residential building.

Learned counsel for the petitioner has vehemently argued that the landlord has sought eviction by unclean hands. Such argument was raised for the reasons that the premises in possession of Shambhu Dayal has

been described as residential building, though it is non-residential building. It has been found in the preceding paragraphs that, in fact, the premises let out to Shambhu Dayal was a residential building. It may be noticed that in this part of the country, it is common practice to raise construction of shop on the ground floor, but to use the upper portion for the purpose of residence. Therefore, it cannot be said that the landlord has sought ejectment of the petitioner by unclean hands.

The landlord is master of his choice in respect of suitability of the premises. Even if the premises on the first floor has been described as office room, in the site plan PW-2/A produced in the suit against Shambhu Dayal, still the requirement pleaded is of shop portion. It is the landlord's choice to use the ground floor i.e. shop portion for setting up of his business. The tenant cannot suggest that the first floor would be suitable for the purpose of business of the landlord. Therefore, even if the first floor is available, the tenant cannot judge need of the landlord and assert that the landlord must establish his business on the first floor of the building.

The learned Appellate Authority has returned a firm finding of fact after appreciating the entire evidence that the landlord requires the portion situated at first floor, for his bonafide use to start his own business. It could not be pointed out that any evidence has been misread or not taken into consideration while returning such finding. In fact, I have considered the additional documents produced by the petitioner, but has no hesitation to return a finding that the findings recorded by the learned Appellate Authority are just and reasonable.

Consequently, I do not find any material illegality or

irregularity in the findings recorded by the Courts below which may warrant interference of this Court in exercise of its revisional jurisdiction. The revision petition stands dismissed. However, the order of ejectment shall not be executed for a period of 3 months from today.

13-08-2007

**mohinder*

(HEMANT GUPTA)
JUDGE